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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,766	01/12/2001	Mohsen Shahinpoor	2359-00	4964

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EXAMINER

BLANCO, JAVIER G

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/759,766

Applicant(s)

SHAHINPOOR ET AL.

Examiner

Javier G. Blanco

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/27/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 3,7-9 and 11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicants' amendment of claim 1 in the reply filed on July 27, 2005 is acknowledged.
2. Applicants' cancellation of claim 13 in the reply filed on July 27, 2005 is acknowledged.
3. The Affidavit under 37 CFR 1.132 filed July 27, 2005 is insufficient to overcome the rejection of claims 1, 2, 4-6, and 10 based upon Ganem et al. (CA 2 358 485 A1) as set forth in the last Office action because: see *Response to Arguments* (below).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1, 2, 4-6, and 10 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Ganem et al. (CA 2 358 485 A1).

Referring to Figures 1, 2, and 4, Ganem et al. disclose an apparatus *for augmenting* (emphasis added to functional language) near vision accommodation by contraction of the ciliary muscles of the eye by reinforcement of at least one set of natural zonular fibers (see Abstract; see entire document), the apparatus comprising at least one bridge (ring or device 20) *for transmitting* (emphasis added to functional language) a contraction force from the ciliary muscles to the at least one set of natural zonular fibers (see page 1, lines 22-24; page 2, lines 3-6 and lines 10-11; see claim 1); said at least one bridge *configured to be affixed* (emphasis added to

Art Unit: 3738

functional language) in and around the at least one set of natural zonular fibers of the eye (see Figures 1, 2, and 4); said at least one bridge *for augmenting* (emphasis added to functional language) the contraction force and *for constricting* (emphasis added to functional language) the natural crystalline lens by the augmented contraction force from the transmission of the contraction force from the ciliary muscles to the at least one set of natural zonular fibers and the at least one bridge (see page 1, lines 22-24; page 2, lines 3-6 and lines 10-11; see claim 1).

Response to Arguments

6. Applicants' arguments filed July 27, 2005 have been fully considered but they are not persuasive.

a. It should be noted that Applicants' arguments are mostly based on the functional language of claim 1. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959).

"[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

b. Applicants argue: "*Nowhere in the Ganem et al., cited passage or in the entire specification is contraction of ciliary muscles ever mentioned*". Examiner respectfully disagrees. It is common knowledge that the ciliary body (ciliary muscles) causes (stimulates) tension or relaxation on the zonular fibers (zonules), which fibers provoke accommodation of the eye. This is disclosed in the instant application at (for example) pages 2-3. Ganem et al. disclose at page 1, lines 15-18 the problem of zonular fibers that are no longer able to act on the natural crystalline lens to provoke accommodation. Ring or device 20 is implanted in and around at least one set of natural zonular

Art Unit: 3738

fibers of the eye (see Figures 1, 2, and 4). The implantation of ring or device 20 makes it possible to obtain a new stressing of the zonules, which “*will thus be rendered active again when the fibrils which constitute them are excited*” (see page 2, lines 3-6 and lines 10-11, and claim 1). As mentioned above, the “*stimulations applied to said zonules*” originates from contraction (or relaxation) of the ciliary body (ciliary muscles).

c. Applicants argue: “*The Examiner appears to interpret the term bridge, which has never been mentioned in Ganem et al., as ring or device 20*”. Further, Applicants emphasized: “*The term “bridge” in the specification is defined as “direct pressure transmission bridges between the ciliary muscles and the lens capsule so that upon contraction of the ciliary muscle, the hoop pressure is directly transmitted to the anterior region of the lens capsule and thus forces the lens to become more spherical, and accommodate for near vision*”. Examiner respectfully disagrees. As cited in the M.P.E.P. 2111.01, “any special meaning assigned to a term must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention”. It is the Examiner’s opinion that the passage (page 18, lines 32-36) cited by Applicants does not provide a special meaning to the term/word “bridge”. Ring or device 20 is implanted in and around at least one set of natural zonular fibers of the eye (see Figures 1, 2, and 4), and is a “direct pressure transmission bridge” as shown in 6.b. (above).

Allowable Subject Matter

7. Claim 12 is allowed.

Conclusion


8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 571-272-4747. The examiner can normally be reached on M-F (7:30 a.m.-4:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB



October 14, 2005



CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
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